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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,210	03/27/2001	Peter Wagner	microd 004	3853

7590 09/20/2005
ERNESTO LIEBSTER
9000 SHERIDAN STREET, STE. 154
PEMBROKE PINES, FL 33024

EXAMINER

CEPERLEY, MARY

ART UNIT PAPER NUMBER

1641

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/820,210

Applicant(s)

WAGNER ET AL.

Examiner

Mary (Molly) E. Ceperley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,9,26 and 78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,9,26 and 78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1) Applicant's arguments filed June 27, 2005 have been fully considered. It is noted in passing that in the discussion of paragraph **B.** of page 5, the first structure related to "serine" is actually a cysteine-based structure while the second structure is related to "serine" rather than cysteine.

2) Although specific claims may be discussed in the rejections below, these rejections are also applicable to all other claims in which the noted problems/language occur.

3) Claims 1, 5, 9, 26 and 78 are again rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement for the reason stated in paragraph **5)** of the January 26, 2005 Office action.

Although applicants' description under **B.** (page 5 of the June 27, 2005 response) does not specifically address the "residue of glycine" issue of paragraph **5)** of the Office action, applicants have clarified that the L³ moiety of the structure of claim 1 is intended to be the side chain of an amino acid selected from the group consisting of lysine, cysteine, serine, aspartic acid, glutamic acid, and threonine. The core of each of these amino acids is the moiety "-NH-CH-CO-" which corresponds to the same moiety appearing in the structure of claim 1. See the structures of pages 5 and 6 of the June 27, 2005 response.

However, the language of claim 1 which defines the moiety "-L³-Z" is inconsistent with the language of original claim 11 and the specification. Claim 1 states that the "reactive group" of "-L³-Z" is selected from the group consisting of lysine, cysteine, serine, aspartic acid, glutamic acid, and threonine. This is inconsistent with original claim 11 wherein the "amino acid" is selected from the group consisting of lysine, cysteine, serine, aspartic acid, glutamic acid, and threonine (see also the specification at page 23, lines 19-21). The language of claim 1 is also inconsistent with the discussion of paragraph **B.** of page 5 of the June 27, 2005 response.

It would appear that this rejection could be overcome by changing the language for the definition of the "-L³-Z" term of claim 1 to indicate that the "L³" moiety is a side chain of an optionally protected

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amino acid wherein the amino acid is selected from the group consisting of lysine, cysteine, serine, aspartic acid, glutamic acid, and threonine and defining "Z" as a pendant reactive group consistent with original claims 11 and 12.

4) THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary (Molly) E. Ceperley whose telephone number is (571) 272-0813. The examiner can normally be reached from 8 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le, can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

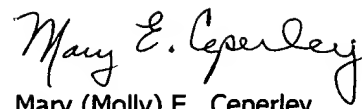
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 15, 2005

A handwritten signature in cursive script that reads "Mary E. Ceperley". The signature is written in black ink and is positioned above the printed name and title.

Mary (Molly) E. Ceperley
Primary Examiner
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